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Adam Smith and the Philosophy of Law and Economics is a unique book. Malloy and Evensky bring together a team of international and interdisciplinary scholars to address the work of Adam Smith as it relates to law and economics. In addition to their own contributions, the book includes works by Dr. John W. Cairns of the University of Edinburgh, Dr. J. Ralph Lindgren of Lehigh University, Professor Kenneth A.B. Mackinnon of the University of Waikato, and the Honorable Richard A. Posner of the United States Circuit Court of Appeals. Together these authors bring expertise from the areas of law, philosophy, history, economics, and law and economics to a new study of Adam Smith and his work. Part One of the book presents new and important observations on Smith's views on community, ethics, the court system, criminal law, and delictual or tort law liability. In this part of the book Smith's work is also examined from the perspective of his use as persuasive authority in the works of modern legal economists. In Part Two the 'living Smith' is explored by way of a debate between two major contributors in the field of law and economics. The debate and its analysis create a unique and contemporary opportunity to study Smith as a foundational source in the midst of a current academic and social policy dispute. The understanding of Adam Smith that emerges from this book is new and complex. It will challenge the one-dimensional portrayals of Smith as a promoter of self-interest and it will correct many of the misinterpretations of Smith that are currently fashionable in the worlds of law and economics and the philosophy of law.

In this book Steven Shavell provides an in-depth analysis and synthesis of the economic approach to the building blocks of our legal system, namely, property law, tort law, contract law, and criminal law. He also examines the litigation process as well as welfare economics and morality. Aimed at a broad audience, this book requires neither a legal background nor technical economics or mathematics to understand it. Because of its breadth, analytical clarity, and general accessibility, it is likely to serve as a definitive work in the economic analysis of law.

The Oxford Handbook of Criminal Law reflects the continued transformation of criminal law into a global discipline, providing scholars with a comprehensive international resource, a common point of entry into cutting edge contemporary research and a snapshot of the state and scope of the field. To this end, the Handbook takes a broad approach to its subject matter, disciplinarily, geographically, and systematically. Its contributors include current and future research leaders representing a variety of legal systems, methodologies, areas of expertise, and research agendas. The Handbook is divided into four parts: Approaches & Methods (I), Systems & Methods (II), Aspects & Issues (III), and Contexts & Comparisons (IV). Part I includes essays exploring various methodological approaches to criminal law (such as criminology, feminist studies, and history). Part II provides an overview of systems or models of criminal law, laying the foundation for further inquiry into specific conceptions of criminal law as well as for comparative analysis (such as Islamic, Marxist, and military law). Part III covers the three aspects of the penal process: the definition of norms and principles of liability (substantive criminal law), along with a less detailed treatment of the imposition of norms (criminal procedure) and the infliction of sanctions (prison or corrections law). Contributors consider the basic topics traditionally addressed in scholarship on the general and special parts of the substantive criminal law (such as jurisdiction, mens rea, justifications, and excuses). Part IV places criminal law in context, both domestically and transnationally, by exploring the contrasts between criminal law and other species of law and state power and by investigating criminal law's place in the projects of comparative law, transnational, and international law.

Written by a lawyer and an economist, this is the first full-length economic study of tort law—the body of law that governs liability for accidents and for intentional wrongs such as battery and defamation. Landes and Posner propose that tort law is best understood as a system for achieving an efficient allocation of resources to safety—that, on the whole, rules and doctrines of tort law encourage the optimal investment in safety by potential injurers and potential victims. The book contains both a comprehensive description of the major doctrines of tort law and a series of formal econom-

ic models used to explore the economic properties of these doctrines. All the formal models are translated into simple commonsense terms so that the "math less" reader can follow the text without difficulty; legal jargon is also avoided, for the sake of economists and other readers not trained in the law. Although the primary focus is on explaining existing doctrines rather than on exploring their implementation by juries, insurance adjusters, and other "real world" actors, the book has obvious pertinence to the ongoing controversies over damage awards, insurance rates and availability, and reform of tort law—in fact it is an essential prerequisite to sound reform. Among other timely topics, the authors discuss punitive damage awards in products liability cases, the evolution of products liability law, and the problem of liability for "mass disaster" torts, such as might be produced by a nuclear accident. More generally, this book is an important contribution to the "law and economics" movement, the most exciting and controversial development in modern legal education and scholarship, and will become an obligatory reference for all who are concerned with the study of tort law.

This book contains illuminating and carefully written literature reviews on the central topics of the economics of property rights and institutions. As a bonus, it includes two fascinating chapters on topics off the beaten path: slavery and new types of property rights in environmental goods. This book will be indispensable for students and experienced scholars alike. Eric Posner, University of Chicago Law School, US This study covers property law and property rights, providing a full summary and comprehensive bibliography of the existing law, together with discussion from an economic perspective on the most important aspects of property law. Leading experts have brought together their knowledge and insight on a full range of issues including comparative property law and the history of property law to create a truly autonomous interdisciplinary resource. This essential reference work will strongly appeal to scholars and students enrolled in academic programmes of law and economics. Academic lawyers involved in research and teaching of private (common) law, practicing lawyers in the field of real estate law, as well as economists involved in researching development economics and transition economics will also find this an invaluable resource.

This is a history—though, intentionally, a brief history—of the rise of law and economics as a field of thought in the U.S. college and law school academy, though the field has expanded to Europe and South America and will expand further as other legal systems develop. This book explains the origins of the field and the sources of its growth during its formative period. It describes the intellectual roots of the field, and the field's relationship to the understanding of the role of the legal system in directing the functioning of the economy. It describes the effect of the Great Depression and the expansion of governmental power on advancing the functional approach. The book then addresses the work of Aaron Director, during the late 1950s, on focusing economic analysis as a means of understanding the effects of the legal and regulatory system on the allocation of resources in the society. Then it turns to the subsequent intellectual founders of the field—Ronald Coase, Guido Calabresi, and Richard Posner—and attempts to explain the significance of their work. It also discusses the efforts of Robert Bork and Henry Manne toward the influence of law and economics on public policy. The book ends with the founding of the American Law and Economics Association in 1991. This is an essential companion to law and economics texts for undergraduate law and economic students and, especially, a general supplement to first-year casebooks for law school students.

Ernst-Joachim Mestmacker reviews Richard Posner's and Friedrich A. von Hayek's legal theories. Both are famous for their contributions to law and economics. They are, however, adversaries in their concepts of law and how it is to be informed by economics. Posner finds the only scientific legal theory in the external (economic) analysis of law. With Friedrich von Hayek the role of rules of conduct and legislation is to be determined by the principles that govern a free and competitive order. There are, contrary to Posner, important contributions from legal scholarship, legal history and comparative law.

Exchange of goods and ideas among nations, cross-border pollution, global warming, and interna-

tional crime pose formidable questions for international law. Two respected scholars provide an intellectual framework for assessing these problems from a rational choice perspective and describe conditions under which international law succeeds or fails.

By providing readers with a noncritical description of the broad contours of each school of thought, Mercurio and Medema convey a strong sense of the important elements of each of these interrelated yet varied traditions.

'A creative, informative, and highly readable narrative... The book consists of four sections dealing in turn with (1) the law and economics of antitrust policy; (2) the problem of collusion; (3) the question of exclusionary practices; and (4) the difficulties of enforcement... This is a provocative work that judiciously raises pertinent questions about our antitrust policy.'-Robert J. Steamer, Perspective

In a concise, compelling argument, one of the founders and most influential advocates of the law and economics movement divides the subject into two separate areas, which he identifies with Jeremy Bentham and John Stuart Mill. The first, Benthamite, strain, "economic analysis of law," examines the legal system in the light of economic theory and shows how economics might render law more effective. The second strain, law and economics, gives equal status to law, and explores how the more realistic, less theoretical discipline of law can lead to improvements in economic theory. It is the latter approach that Judge Calabresi advocates, in a series of eloquent, thoughtful essays that will appeal to students and scholars alike.

How the Chicago School Overshot the Mark is about the rise and recent fall of American antitrust. It is a collection of 15 essays, almost all expressing a deep concern that conservative economic analysis is leading judges and enforcement officials toward an approach that will ultimately harm consumer welfare. For the past 40 years or so, U.S. antitrust has been dominated intellectually by an unusually conservative style of economic analysis. Its advocates, often referred to as "The Chicago School," argue that the free market (better than any unelected band of regulators) can do a better job of achieving efficiency and encouraging innovation than intrusive regulation. The cutting edge of Chicago School doctrine originated in academia and was popularized in books by brilliant and innovative law professors like Robert Bork and Richard Posner. Oddly, a response to that kind of conservative doctrine may be put together through collections of scores of articles but until now cannot be found in any one book. This collection of essays is designed in part to remedy that situation. The chapters in this book were written by academics, former law enforcers, private sector defense lawyers, Republicans and Democrats, representatives of the left, right and center. Virtually all agree that antitrust enforcement today is better as a result of conservative analysis, but virtually all also agree that there have been examples of extreme interpretations and misinterpretations of conservative economic theory that have led American antitrust in the wrong direction. The problem is not with conservative economic analysis but with those portions of that analysis that have "overshot the mark" producing an enforcement approach that is exceptionally generous to the private sector. If the scores of practices that traditionally have been regarded as anticompetitive are ignored, or not subjected to vigorous enforcement, prices will be higher, quality of products lower, and innovation diminished. In the end consumers will pay.

The author of more than 50 books and 150 articles, Richard Posner is one of the most cited legal scholars of the 20th century. His sometimes controversial views are incredibly complex, but are unified by the use of economics to analyze law and legal phenomena. This book offers an innovative and highly original guide to Posner's economic analysis of law. Rather than using a traditional structure, this volume guides the reader through Posner's ideas via a series of key themes. Each chapter includes an original introduction written by Alain Marciano and Sophie Harnay, a reprint of a text either written by Posner or about his work, and additional bibliographical references to complete the presentation of Posner's ideas. Themes covered include 9/11, CIA, Altruism, Behavioral law and economics, Capitalism, Coase, Ronald, Common law, Crisis, Darwin, Efficiency,

Judicial decision making, Justice, Law and Economics, Liberalism (conservatism), Markets, Morals (law and), Pragmatism, Precedent, Public intellectuals, Rationality, and Wealth, to name just a few. In order to provide an overview of Posner's activities since the end of the 1960s, the book will include scientific articles and book chapters, newspapers, magazines articles, interviews and blog posts. This innovative approach is taken on in order to offer a truly rounded view of Posner's work and opinions. In addition, the volume will include critical texts in order to shed light on the alleged limits of Posner's analyses and how he faced these criticisms. This guidebook will be essential reading for all those working at the intersection of law and economics.

Providing students with a solid grounding in the economic analysis of the law, this reader brings together edited versions of diverse and challenging journal articles into a unified collection. Chosen to provoke thought and discussion, these carefully streamlined articles apply economic theories to many aspects of the law, from intellectual property, corporate finance, and contracts to property rights, family law, and criminal law. Provides real-life examples and implications of economic theory. Creates a unified vision of the law, showing the interconnections between the various fields. Covers a broad range of topics, from intellectual property and corporate finance to family and criminal law. Encourages intuitive understanding and applications of the economic principles, due to reduced mathematical content.

The book is divided into two parts. The first contains more traditional law and economics articles, covering a range of conventional legal topics. This part, it is hoped, will give the novice a flavour of the state of the field and the traditional methods of analysis. The second part attempts to introduce new methodological techniques and subject-matter concerns to law and economics.

The Encyclopedia provides a detailed and comprehensive account of the subject known as public choice. However, the title would not convey sufficiently the breadth of the Encyclopedia's contents which can be summarized better as the fruitful interchange of economics, political science and moral philosophy on the basis of an image of man as a purposive and responsible actor who pursues his own objectives as efficiently as possible. This fruitful interchange between the fields outlined above existed during the late eighteenth century during the brief period of the Scottish Enlightenment when such great scholars as David Hume, Adam Ferguson and Adam Smith contributed to all these fields, and more. However, as intellectual specialization gradually replaced broad-based scholarship from the nineteenth century onwards, it became increasingly rare to find a scholar making major contributions to more than one. Once Alfred Marshall defined economics in neoclassical terms, as a narrow positive discipline, the link between economics, political science and moral philosophy was all but severed and economists redefined their role into that of 'the humble dentist' providing technical economic information as inputs to improve the performance of impartial, benevolent and omniscient governments in their attempts to promote the public interest. This indeed was the dominant view within an economics profession that had become besotted by the economics of John Maynard Keynes and Paul Samuelson immediately following the end of the Second World War. Economic Analysis of Law, Eighth Edition, written by the pioneer in law and economics analysis, Richard A. Posner, remains the classic text in its field. This lucid, comprehensive casebook covers every aspect of the economic analysis of the law, including the common law, public regulation of the market, business organizations and financial markets, the distribution of income and wealth, the legal process, and the Constitution and the federal system. The Eighth Edition has been substantially revised to take into account current events, including the continuing economic crisis, the re-emerging field of organization economics, and recent work by the author and others on judicial behavior. The this preeminent casebook continues to offer Coverage of the legal-economic perspective on all key areas, from common law to the constitution. Accessible, lucid, and user-friendly writing and organization: Non-quantitative approach does not assume or require prior knowledge of economics or mathematics Part and chapter organization are based on legal, not economic, concepts End-of-chapter sections reinforce and extend learning with problems and suggested further readings. The Eighth Edition has been updated and revised to reflect current economic realities: The continuing economic crisis, which began in September 2008, has led to a reexamination of some of the tenets of economics manifested in previous editions. These changes are found primarily in the following chapters: Chapter 1, The Nature of Economic Reasoning Chapter 13, The Choice Between Regulation and Common Law Chapter 14, Corporations, Secured and Unsecured Financing, Bankruptcy Chapter 15, Financial Markets In Chapter 14, Corporations, Secured and Unsecured Financing, Bankruptcy, changes have been incorporated based on the re-emerging field of organization economics. Substantial changes to reflect recent work by the author and others on judicial behavior are evident in Chapter 19, The Market, the Adversary System, and the Legislative Process

as Methods of Resource Allocation. Significant changes have also been made in the following chapters: Chapter 3, Property Chapter 4, Contract Rights and Remedies Chapter 17, Taxation Chapter 21, Civil and Criminal Procedure

In recent years there has been a revival of interest in the philosophical study of contract law. In 1981 Charles Fried claimed that contract law is based on the philosophy of promise and this has generated what is today known as 'the contract and promise debate'. Cutting to the heart of contemporary discussions, this volume brings together leading philosophers, legal theorists, and contract lawyers to debate the philosophical foundations of this area of law. Divided into two parts, the first explores general themes in the contract theory literature, including the philosophy of promising, the nature of contractual obligation, economic accounts of contract law, and the relationship between contract law and moral values such as personal autonomy and distributive justice. The second part uses these philosophical ideas to make progress in doctrinal debates, relating for example to contract interpretation, unfair terms, good faith, vitiating factors, and remedies. Together, the essays provide a picture of the current state of research in this revitalized area of law, and pave the way for future study and debate.

The Law and Economics approach to law dominates the intellectual discussion of nearly every doctrinal area of law in the United States and its influence is growing steadily throughout Europe, Asia, and South America. Numerous academics and practitioners are working in the field with a flow of uninterrupted scholarship that is unprecedented, as is its influence on the law. Academically every major law school in the United States has a Law and Economics program and the emergence of similar programs on other continents continues to accelerate. Despite its phenomenal growth, the area is also the target of an ongoing critique by lawyers, philosophers, psychologists, social scientists, even economists since the late 1970s. While the critique did not seem to impede the development of the field, it certainly has helped it to become more sophisticated, inclusive, and mature. In this volume some of the leading scholars working in the field, as well as a number of those critical of Law and Economics, discuss the foundational issues from various perspectives: philosophical, moral, epistemological, methodological, psychological, political, legal, and social. The philosophical and methodological assumptions of the economic analysis of law are criticized and defended, alternatives are proposed, old and new applications are discussed. The book is ideal for a main or supplementary textbook in courses and seminars on legal theory, philosophy of law, jurisprudence, and (of course) Law and Economics.

Posner uses economic analysis to probe justice and efficiency, primitive law, privacy, and the constitutional regulation of racial discrimination.

This comprehensive text covers every aspect of economic analysis of the law, from common law to the Constitution.

This text for students of law and economics concentrates on the progress of scholarship in the field. Concrete applications are emphasized over abstract theory in the book.

This book takes a fresh look at the most dynamic area of American law today, comprising the fields of copyright, patent, trademark, trade secrecy, publicity rights, and misappropriation. Topics range from copyright in private letters to defensive patenting of business methods, from moral rights in the visual arts to the banking of trademarks, from the impact of the court of patent appeals to the management of Mickey Mouse. The history and political science of intellectual property law, the challenge of digitization, the many statutes and judge-made doctrines, and the interplay with antitrust principles are all examined. The treatment is both positive (oriented toward understanding the law as it is) and normative (oriented to the reform of the law). Previous analyses have tended to overlook the paradox that expanding intellectual property rights can effectively reduce the amount of new intellectual property by raising the creators' input costs. Those analyses have also failed to integrate the fields of intellectual property law. They have failed as well to integrate intellectual property law with the law of physical property, overlooking the many economic and legal-doctrinal parallels. This book demonstrates the fundamental economic rationality of intellectual property law, but is sympathetic to critics who believe that in recent decades Congress and the courts have gone too far in the creation and protection of intellectual property rights. Table of Contents: Introduction 1. The Economic Theory of Property 2. How to Think about Copyright 3. A Formal Model of Copyright 4. Basic Copyright Doctrines 5. Copyright in Unpublished Works 6. Fair Use, Parody, and Burlesque 7. The Economics of Trademark Law 8. The Optimal Duration of Copyrights and Trademarks 9. The Legal Protection of Postmodern Art 10. Moral Rights and the Visual Artists Rights Act 11. The Economics of Patent Law 12. The Patent Court: A Statistical Evaluation 13. The

Economics of Trade Secrecy Law 14. Antitrust and Intellectual Property 15. The Political Economy of Intellectual Property Law Conclusion Acknowledgments Index Reviews of this book: Chicago law professor William Landes and his polymath colleague Richard Posner have produced a fascinating new book...[The Economic Structure of Intellectual Property Law] is a broad-ranging analysis of how intellectual property should and does work...Shakespeare's copying from Plutarch, Microsoft's incentives to hide the source code for Windows, and Andy Warhol's right to copyright a Brillo pad box as art are all analyzed, as is the question of the status of the all-bran cereal called 'All-Bran.' -- Nicholas Thompson, New York Sun Reviews of this book: Landes and Posner, each widely respected in the intersection of law and economics, investigate the right mix of protection and use of intellectual property (IP)...This volume provides a broad and coherent approach to the economics and law of IP. The economics is important, understandable, and valuable. --R. A. Miller, Choice Intellectual property is the most important public policy issue that most policymakers don't yet get. It is America's most important export, and affects an increasingly wide range of social and economic life. In this extraordinary work, two of America's leading scholars in the law and economics movement test the pretensions of intellectual property law against the rationality of economics. Their conclusions will surprise advocates from both sides of this increasingly contentious debate. Their analysis will help move the debate beyond the simplistic ideas that now tend to dominate. --Lawrence Lessig, Stanford Law School, author of The Future of Ideas: The Fate of the Commons in a Connected World An image from modern mythology depicts the day that Einstein, pondering a blackboard covered with sophisticated calculations, came to the life-defining discovery: Time = \$\$\$. Landes and Posner, in the role of that mythological Einstein, reveal at every turn how perceptions of economic efficiency pervade legal doctrine. This is a fascinating and resourceful book. Every page reveals fresh, provocative, and surprising insights into the forces that shape law. --Pierre N. Leval, Judge, U.S. Court of Appeals, Second Circuit The most important book ever written on intellectual property. --William Patry, former copyright counsel to the U.S. House of Representatives, Judiciary Committee Given the immense and growing importance of intellectual property to modern economies, this book should be welcomed, even devoured, by readers who want to understand how the legal system affects the development, protection, use, and profitability of this peculiar form of property. The book is the first to view the whole landscape of the law of intellectual property from a functionalist (economic) perspective. Its examination of the principles and doctrines of patent law, copyright law, trade secret law, and trademark law is unique in scope, highly accessible, and altogether greatly rewarding. --Steven Shavell, Harvard Law School, author of Foundations of Economic Analysis of Law

The most exciting development in legal thinking since World War II has been the growth of interdisciplinary legal studies. Judge Richard Posner has been a leader in this movement, and his new book explores its rapidly expanding frontier.

Distinguished by brevity, lucid writing, and well-chosen examples, An Introduction to Law and Economics, now in its Fifth Edition, focuses on a set of core topics that include property, contracts, torts, criminal law, and litigation. Avoiding specialized jargon and mathematics, Polinsky teaches students how to think like an economist and understand legal issues from an economic perspective. New to the Fifth Edition: A streamlining of the products liability chapter A revised discussion of the redistributive effects of legal rules to reflect more recent scholarship on this topic The addition of several other refinements in the text and in new footnotes An updated bibliography Professors and students will benefit from: Solid coverage of relevant economic principles A normative approach that illustrates how to assess legal rules and policies in terms of economic and social goals Clear explanations of concepts

Economic analysis of law is an interesting and challenging attempt to employ the concepts and reasoning methods of modern economic theory so as to gain a deeper understanding of legal problems. According to Richard A. Posner it is the role of the law to encourage market competition and, where the market fails because transaction costs are too high, to simulate the result of competitive markets. This would maximize economic efficiency and social wealth. In this work, the lawyer and economist Klaus Mathis critically appraises Posner's normative justification of the efficiency paradigm from the perspective of the philosophy of law. Posner acknowledges the influences of Adam Smith and Jeremy Bentham, whom he views as the founders of normative economics. He subscribes to Smith's faith in the market as an ideal allocation model, and to Bentham's ethical consequentialism. Finally, aligning himself with John Rawls's contract theory, he seeks to legitimize his concept of wealth maximization with a consensus theory approach. In his interdisciplinary study, the author points out the possibilities as well as the limits of economic analysis of law. It pro-

vides a method of analysing the law which, while very helpful, is also rather specific. The efficiency arguments therefore need to be incorporated into a process for resolving value conflicts. In a democracy this must take place within the political decision-making process. In this clearly written work, Klaus Mathis succeeds in making even non-economists more aware of the economic aspects of the law.

Cost-benefit analysis is a widely used governmental evaluation tool, though academics remain skeptical. This volume gathers prominent contributors from law, economics, and philosophy for discussion of cost-benefit analysis, specifically its moral foundations, applications and limitations. This new scholarly debate includes not only economists, but also contributors from philosophy, cognitive psychology, legal studies, and public policy who can further illuminate the justification and moral implications of this method and specify alternative measures. These articles originally appeared in the *Journal of Legal Studies*. Contributors: - Matthew D. Adler - Gary S. Becker - John Broome - Robert H. Frank - Robert W. Hahn - Lewis A. Kornhauser - Martha C. Nussbaum - Eric A. Posner - Richard A. Posner - Henry S. Richardson - Amartya Sen - Cass R. Sunstein - W. Kip Viscusi

When it was first published a quarter of a century ago, Richard Posner's exposition and defense of an economic approach to antitrust law was a jeremiad against the intellectual disarray that then characterized the field. As other perspectives on antitrust law have fallen away, Posner's book has played a major role in transforming the field of antitrust law into a body of economically rational principles largely in accord with the ideas set forth in the first edition. Today's antitrust professionals may disagree on specific practices and rules, but most litigators, prosecutors, judges, and scholars agree that the primary goal of antitrust laws should be to promote economic welfare, and that economic theory should be used to determine how well business practices conform to that goal. In this thoroughly revised edition, Posner explains the economic approach to new generations of lawyers and students. He updates and amplifies his approach as it applies to the developments, both legal and economic, in the antitrust field since 1976. The "new economy," for example, has presented a host of difficult antitrust questions, and in an entirely new chapter, Posner explains how the economic approach can be applied to new industries such as software manufacturers, Internet service providers, and those that provide communications equipment and services. "The antitrust laws are here to stay," Posner writes, "and the practical question is how to administer them better--

more rationally, more accurately, more expeditiously, more efficiently." This fully revised classic will continue to be the standard work in the field.

This open access book examines from a variety of perspectives the disappearance of moral content and ethical judgment from the models employed in the formulation of modern economic theory, and some of the papers contain important proposals about how moral judgment could be reintroduced in economic theory. The chapters collected in this volume result from the favorable reception of the first volume of the *Virtues in Economics* series and represent further contributions to the themes set out in that volume: (i) examining the philosophical and methodological fallacies of this turn in modern economic theory that the removal of the moral motivation of economic agents from modern economic theory has entailed; and (ii) proposing a return descriptive economics as the means with which the moral content of economic life could be restored in economic theory. This book is of interest to researchers and students of the methodology of economics, ethics, philosophers concerned with agency and economists who build economic models that rest in the intention of the agent.